APPENDIX A-1.

Kentucky Revised Statutes (1948 Ed.), Section 311.110.

"Grounds for suspension; revocation; refusal to issue license. The board may suspend, revoke or refuse to issue any license to practice medicine for any of the following causes:

(1) Presentation to the board of any license certificate or diploma illegally or fraudulently obtained, or the practice of fraud or deception in passing an examination;

(2) The commission of a criminal abortion, or conviction of a felony involving moral turpitude.

(3) Chronic or persistent inebriety or addiction to a drug habit to an extent that disqualifies from practicing with safety to the people.

(4) Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public."

APPENDIX A-2.

Kentucky Revised Statutes (1948 Ed.), Section 311.120.

"Hearing on suspension, revocation; appeal to Governor from any action concerning license.

(1) In every proceeding for suspension or revocation the holder of the license shall be furnished with a copy of the complaint and given at least thirty days thereafter to prepare for the hearing. He may be heard in person and by counsel. The board may take oral or written proof for and against the complaint as it considers will best present the facts.

(2) Upon suspension or revocation of a license the board shall give official notice of its action, under seal, to the county clerk of the county in which the licensee is registered, and his name shall be marked as suspended for the period indicated or stricken from the register in accordance with the notice.

(3) In all cases of suspension, revocation or refusal to issue a license, the applicant or licensee may appeal to the Governor, who may affirm or overrule the decision of the board."

APPENDIX A-3.

Kentucky Medical and Osteopathic Practice Act of 1952, Section 15 (now K.R.S. 1955 Ed., Section 311.615(1)).

"Continuation of existing licenses; limitation of authority.

(1) All licenses heretofore issued by the board for the practice of medicine or osteopathy, or any limited school or system, are hereby declared to be valid and in full force and effect unless they have become expired, cancelled, suspended or revoked in accordance with law."

APPENDIX A-4.

Kentucky Medical and Osteopathic Practice Act of 1952, Section 18, Kentucky Acts 1952 (p. 400).

"Sections 311.010 to 311.130, inclusive, and Sections 311.270 to 311.290, inclusive and subsections (1), (4) and (5), inclusive of Section 311.990 of the Kentucky Revised Statutes are repealed."

APPENDIX A-5.

Kentucky Medical and Osteopathic Practice Act of 1952, Section 6(7) (now K.R.S. 311.570(7) 1955 Ed.).

"(7) No license shall be issued, refused, suspended or revoked by the board, nor shall any licensee be placed on probation, except in compliance with KRS 311.550 to 311.620 and the rules and regulations promulgated thereunder by the board and filed with the Secretary of State of this Commonwealth pursuant to KRS Chapter 13."

APPENDIX B-1.

SHOW CAUSE LETTER DATED APRIL 17, 1950.

"E. M. Howard, M. D., President
J. Watts Stovall, M. D., Grayson, Vice-President
F. M. Travis, M. D., Frankfort, Member
George S. Coon, M. D., Louisville, Member
Carl J. Johnson, D. O., Louisville, Member
Bruce Underwood, M. D., Louisville, Secretary
H. Fuller, M. D., Mayfield, Member
R. W. Robertson, M. D., Paducah, Member
C. B. Davis, Ph. G., Louisville, Member

COMMONWEALTH OF KENTUCKY
STATE BOARD OF HEALTH
620 South Third Street
Louisville 2, Kentucky

April 17, 1950

Dr. Stanley Bandeen
Fincastle Building
Louisville, Kentucky

Dear Doctor Bandeen:

You are hereby notified to appear for a hearing before the State Board of Health of Kentucky at the Frankfort

Country Club which is located one and one-half miles from Frankfort, Kentucky, on the Lexington road at 10:30 A. M. on the 18th day of May, 1950, to show cause why your license to practice osteopathy in the Commonwealth of Kentucky should not be revoked because of grossly unprofessional or dishonest conduct of character likely to deceive or defraud the public in the treatment of cancer and tuberculosis.

You may appear in person or by counsel or both, as you may desire.

State Board of Health,
By (s) Bruce Underwood, M.D.
Secretary."

Registered Return
Receipt Requested

APPENDIX B-2.

"STATE BOARD OF HEALTH OF KENTUCKY

In Re:

Proceeding Against Dr. Stanley Bandeen

SPECIAL DEMURRER.

Dr. Stanley Bandeen demurs specially to the conducting of any proceeding by the State Board of Health of Kentucky as to possible revocation of any license to practice osteopathy or any other branch of medicine, because

1. No complaint has been filed with said Board against Dr. Stanley Bandeen,

2. No copy of any such complaint has been furnished to Dr. Stanley Bandeen;

and only upon the occurrence of both said happenings does the State Board of Health have jurisdiction to hold such a hearing.

Blakey Helm
Counsel for Dr. Stanley Bandeen"

APPENDIX B-3.

"STATE BOARD OF HEALTH OF KENTUCKY

In Re:

Proceeding Against Dr. Stanley Bandeen

MOTION FOR COPY OF THE COMPLAINT.

Dr. Stanley Bandeen, still objecting to the jurisdiction of the State Board of Health in holding this proceeding, moves the Board to furnish to Dr. Stanley Bandeen a copy of the complaint against him, if any, filed with said Board, and of the facts on which the charges are made.

Blakey Helm
Counsel for Dr. Stanley Bandeen"

APPENDIX B-4.

SHOW CAUSE LETTER OF AUGUST 4, 1950, WITH COPY OF COMPLAINT.

August 4, 1950

Stanley G. Bandeen, D. O.
Fincastle Building
Louisville 2, Kentucky

Dear Doctor Bandeen:

Pursuant to an agreement reached with your attorney Honorable J. Blakey Helm, at your hearing in Frankfort on May 18, 1950, and pursuant to the provision of Chapter 311 of the Kentucky Revised Statutes, you are hereby cited to appear for a hearing before the State Board of Health in the offices of the Board at 620 South Third

Street, Louisville, Kentucky at 10:00 A.M., Central Daylight Saving Time, on Thursday, September 7, 1950, to show cause why your license to practice osteopathy in the State of Kentucky should not be suspended or revoked because of the charges which are outlined in the copy of the complaint which is attached hereto.

You may appear in person or by counsel or both, as you may choose. If you are unable to attend the hearing, you must present satisfactory, substantiating evidence to the State Board of Health or make some other arrangement satisfactory to the Board.

Respectfully,
Bruce Underwood, M.D.
Secretary

BU/bh
Encl.
Via—Registered Mail

APPENDIX B-4.

COPY OF COMPLAINT.

1. GENERAL CHARGE

The general charge is that of "grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public" as provided in subsection 4 of section 311.110 of the Kentucky Revised Statutes.

2. SPECIFIC CHARGES

The specific charges are as follows:

a. Defrauding the public with excessive charges.

b. The use of medicine of doubtful value; deceiving the patient with claims which are unjustified.

c. The failure to follow accepted diagnostic procedures prior to treatment.

d. Defrauding the public by intimidation of patients with scare tactics.

e. Defraud and deceiving the patients with unjustified promises of cure.

f. Statements made to patients which are likely to deceive them with relation to their physical condition.

g. The failure to provide for adequate relief of pain to the patients.

h. The prescription of diets which are contrary to accepted principles.

The specific charges above outlined refer to the following patients:

1. Mrs. Lucinda Limp, Salem, Indiana, who was treated on or about April, 1950.
2. Mr. J. Fred Herns (deceased), of Louisville, Kentucky, who was treated on or about February or March, 1950.
3. Mrs. Mary Frances Rucker of North Pleasureville in Henry County, treated sometime during 1943.
4. Mrs. A. E. Brooks of Shelby County, treated during 1937.
5. Mr. and Mrs. Williams, Waddy, Kentucky, treated during 1937.
6. Mrs. Sam Melton, Hopkins County, treated during February or March, 1950.

APPENDIX B-5.

"STATE BOARD OF HEALTH OF KENTUCKY

In Re:

Proceeding Against Dr. Stanley Bandeen

GENERAL DEMURRER.

Dr. Stanley Bandeen demurs generally to the pleadings and papers filed with the State Board of Health of Kentucky in this proceeding because no complaint has been filed with this Board as required by Section 311.120 (1) Kentucky Revised Statutes, and no other pleading or paper states facts sufficient for a complaint or for a proceeding against Dr. Stanley Bandeen.

Blakey Helm
Counsel for Dr. Stanley Bandeen"

APPENDIX B-6.

"STATE BOARD OF HEALTH OF KENTUCKY

In Re:

Proceeding Against Dr. Stanley Bandeen

ANSWER.

Dr. Stanley Bandeen, still insisting that the State Board of Health of Kentucky, does not have jurisdiction to hold a hearing herein without the filing of a complaint and that facts have not been stated in any pleading or paper herein sufficient to authorize a proceeding against him, now says:

Paragraph I.

Dr. Stanley Bandeen denies the general charge and each and all of the specific charges contained in the paper filed in this proceeding, entitled 'Copy of Complaint'.

Paragraph II

No acts or conduct occurring more than ten years prior to the filing or starting of this proceeding can now be made the basis of a complaint or a charge because, under the provisions of Section 413.160 Kentucky Revised Statutes, any proceeding based on such acts or conduct must be commenced within ten years after the acts or conduct occurred.

Wherefore, Dr. Stanley Bandeen prays that the proceeding pending against him before this Board be dismissed.

Blakey Helm
Counsel for Dr. Stanley Bandeen"

APPENDIX B-7.

"COMMONWEALTH OF KENTUCKY
STATE BOARD OF HEALTH

In the Matter of:

Stanley G. Bandeen,
Respondent.

FINDINGS AND ORDER OF STATE BOARD OF HEALTH.

This case coming on for decision at a meeting of the State Board of Health held on December 13, 1951, and the

undersigned, who constitute a majority of the members of said Board, having considered the record, evidence and briefs herein, the aforesaid State Board of Health, after deliberation in closed sessions, finds that the Respondent, Stanley G. Bandeen, a licentiate of said Board, has, while a licentiate of said Board, engaged in acts and conduct that were grossly unprofessional and dishonorable and of such character that they were likely to, and did, deceive and defraud the public and certain patients and persons, within the meaning of section 311.110 (4) Kentucky Revised Statutes.

Wherefore, the State Board of Health, acting pursuant to the authority conferred upon it by Sections 311.110 and 311.120 Kentucky Revised Statutes, and upon motion made by Dr. Carl J. Johnson, seconded by Dr. George S. Coon, which was unanimously adopted by the undersigned, hereby absolutely revokes any and all licenses heretofore issued by the said Board to the Respondent, Stanley G. Bandeen, to practice osteopathy, to administer drugs, and/or to practice any healing art whatsoever, within the Commonwealth of Kentucky; this order of revocation shall become effective at midnight on December 30, 1951, unless prior thereto said Respondent appeals to the Governor of the Commonwealth of Kentucky in the manner provided by Section 311.120 (3) Kentucky Revised Statutes, in which event this order of revocation shall stand suspended pending decision by said Governor upon said appeal.

The Secretary of the State Board of Health is directed to make this finding and order a part of the minutes of the meeting of said Board, and to cause copies hereof to be forwarded to the Respondent and made a part of the record of this proceeding.

Done at Louisville, Jefferson County, Kentucky, on this the thirteenth day of December, 1951.

(Doctor Bruce Underwood, Secretary of the State Board of Health, did not participate in the above described deliberation or decision.)

State Board of Health

By (s) E. M. Howard
President and member

(s) J. Watts Stovall
Vice-President and member

(s) Geo. S. Coon
Member

(s) Wm. H. Fuller
Member

(s) F. M. Travis
Member

(s) R. W. Robertson
Member

(s) Carl J. Johnson
Member

(s) Clarence B. Davis
Member

I, Bruce Underwood, M. D., Secretary of the State Board of Health, certify that the foregoing is a true and correct copy of 'Findings and Order of the State Board of Health' in the above styled case that was made by said Board and signed by its members whose names appear thereon, at a meeting of said Board held at Louisville, Kentucky, on December 13, 1951.

Witness my hand at Louisville, Kentucky, this the fourteenth day of December, 1951.

(s) Bruce Underwood, M. D.,
Secretary State Board of Health

(State Board of Health
Seal)"

APPENDIX B-8.

"COMMONWEALTH OF KENTUCKY

Before the Governor of Kentucky.

To The Hon. Lawrence W. Wetherby, Governor

APPPEAL FROM ORDER OF THE STATE BOARD OF HEALTH.

This appeal to the Governor of Kentucky is from an order of the State Board of Health of Kentucky entered December 13, 1951, to be effective December 30, 1951, subject to appeal. A photostatic copy of that Order is filed herewith.

The appeal is by Dr. Stanley G. Bandeen, who was licensed to practice osteopathy in Kentucky in 1926, based upon prior admission to practice in Missouri, and who in 1932, along with all other persons holding license certificates by reciprocity, was required to take the general examination for practice of medicine and was in 1933 issued an unlimited license for practice of medicine. The appeal is taken pursuant to section 311.120 (3), Kentucky Revised Statutes.

The order from which this appeal is taken is a part of a paper entitled "Findings and Order of State Board of

Health'. It was entered on December 13, 1951, and the order part reads as follows:

> 'Wherefore, the State Board of Health, acting pursuant to the authority conferred upon it by Sections 311.110 and 311.120 Kentucky Revised Statutes, and upon motion made by Dr. Carl J. Johnson, seconded by Dr. George S. Coon, which was unanimously adopted by the undersigned, hereby absolutely revokes any and all licenses heretofore issued by the said Board to the Respondent, Stanley G. Bandeen, to practice osteopathy, to administer drugs and/or to practice any healing art whatsoever, within the Commonwealth of Kentucky; this order of revocation shall become effective at midnight on December 30, 1951, unless prior thereto said Respondent appeals to the Governor of the Commonwealth of Kentucky in the manner provided by Section 311.120 (3) Kentucky Revised Statutes, in which event this order of revocation shall stand suspended pending decision by said Governor upon said appeal.'

The appellant, Dr. Stanley G. Bandeen, respectfully states that the Order of the State Board of Health of Kentucky is illegal, unauthorized and in violation of appellant's rights under the Fifth and Fourteenth Amendments to the Constitution of the United States, and that said Order should, for the reasons hereinafter set forth, be overruled and rescinded by the Governor.

Appellant states that the reasons or grounds upon which said Order is illegal, unauthorized and unconstitutional, are:

1. Proceedings for suspension or revocation of a license to practice medicine, including osteopathy, may be instituted only by some person filing with the State Board

of Health a complaint as provided in Section 311.120 Kentucky Revised Statutes, based upon some cause listed in Section 311.110 of said Statutes, and this proceeding was not so instituted.

2. In proceedings for suspension or revocation of a license to practice medicine, the statute requires that the holder of the license shall be furnished with a copy of the complaint, but despite several efforts by Dr. Bandeen's counsel to procure such copy, appellant has never been furnished, or received, a copy of any complaint.

3. The findings portion of said 'Findings and Order' does not state any finding of fact, but only conclusions of law, and does not inform anyone as to whether said finding is based on facts introduced in evidence or on information otherwise obtained.

4. The Findings of the State Board of Health on which its Order is based, is not sustained by the evidence, and is contrary to the evidence. The evidence does not prove any conduct, grossly or at all unprofessional, or dishonorable, or of a character likely to deceive or defraud the public, and does not show that appellant did deceive or defraud the public or certain or any patients or persons.

5. The State Board of Health conceived this proceeding to be an ex parte investigation, not a hearing by it as a tribunal, and used its employes as investigators and advisers, and permitted its own Secretary to testify at great length, not under oath, and to file with his testimony a five page memorandum, signed by him, not verified by any one, and prejudicial to appellant, with this statement (Tr., p. 81):

> 'We simply want to put into the record without any idea of proving it or that they are competent or anything, simply the statement that there are all of the list.'

6. The State Board of Health denied to appellant a fair, impartial hearing not only by the admission of unsworn testimony and a memorandum, but by refusing to limit the evidence before it to that presented to the Board at its scheduled hearing, the Chairman of the Board stating when objection made to consideration of other evidence (Tr., p. 37):

> 'I am sorry to disagree with you, but we are trying the case on what we can hear now *and* what we can get authentically and reliably through our investigators.' (Emphasis ours.)

7. The State Board of Health further denied to appellant a fair, impartial trial in that on the hearing the Secretary of the Board, who was acting as chief prosecutor, stated (p. 108) that this proceeding was limited to the three cases presented, and then he later discussed, at some length, a claimed mis-listing in a telephone directory, which had never been mentioned in any notice, complaint, charge-sheet or other paper prior to the hearing, and the Board's counsel further pressed this point, when in fact, it was doubtful if the listing was erroneous, and it was eliminated a year ago.

8. The State Board of Health has interpreted the law to place upon it investigating and detective duties, not delegated to it in any statute, and in performing this function, it has used its investigators, attorneys and other representatives to solicit complaints against medical practitioners, and said Board has made it practically impossible for it to hold a fair, impartial trial, because the witnesses are solicited by its representatives, its attorneys file pleadings for the Board, and appear in the name of the Board to prosecute proceedings before the Board, when this Board in its duties as to possible suspensions and revocations is constituted as an impartial tribunal to which

the Legislature has committed the duty of holding hearings on specific complaints; that such procedure was followed in this case despite appellant's objections, and this prevented a fair, impartial hearing.

9. Appellant has spent a great amount of study, time and money in preparing himself as an osteopathic physician and surgeon. This investment gives to appellant not only the desire to use his ability in the healing of the sick, but gives him a right which the law does not permit to be taken from him except for legal cause and through legal methods. No complaint was filed with the State Board of Health, or furnished to appellant; the evidence was not limited to facts presented at the hearing, and said Board has made no finding of facts, and the evidence does not show any unprofessional or dishonorable conduct. The Order made by the State Board of Health is, therefore, illegal, unauthorized and constitutes a denial to the appellant of equal protection of the law, and of due process of law, as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

Appellant, Dr. Stanley G. Bandeen, prays that the Governor of Kentucky recognize his rights and overrule and rescind the said Order of the State Board of Health.

(s) Blakey Helm

Counsel for Appellant,
510 Marion E. Taylor Bldg.,
Louisville 2, Ky."

APPENDIX C-1.

FRANKLIN CIRCUIT COURT
No. 45819

Stanley G. Bandeen, - - - - - - Plaintiff,

v.

E. M. Howard,
Harlan, Kentucky,
J. Watts Stovall,
Grayson, Kentucky,
Bruce Underwood,
Louisville, Kentucky,
George S. Coon,
Louisville, Kentucky,
Thomas P. Leonard,
Frankfort, Kentucky,
W. H. Fuller,
Mayfield, Kentucky,
Carl J. Johnson,
Louisville, Kentucky,
R. W. Robertson,
Paducah, Kentucky,
Clarence Davis,
Louisville, Kentucky, individually and collectively as constituting the State Board of Health of Kentucky,
Lawrence W. Wetherby,
Governor of the Commonwealth of Kentucky,
Charles K. O'Connell,
Secretary of State of the Commonwealth of Kentucky, and
James F. Queenan,
Clerk of the Jefferson County Court, Louisville, Kentucky, - - - - - Defendants.

PETITION IN EQUITY.

Plaintiff, Stanley G. Bandeen, states that he is a resident of Shelby County, Kentucky; that he has been since 1926 duly authorized and licensed to practice osteopathy within the Commonwealth of Kentucky; and that he has been so engaged in the practice of osteopathy in Jefferson County since 1926.

Plaintiff states that the defendants, E. M. Howard, J. Watts Stovall, Bruce Underwood, George S. Coon, Thomas P. Leonard, W. H. Fuller, Carl J. Johnson, R. W. Robertson and Clarence Davis, are the duly appointed, qualified and acting members of the State Board of Health of Kentucky with official offices at 620 South Third Street, Louisville, Kentucky.

Plaintiff states that the defendants Lawrence W. Wetherby is the duly elected, qualified and acting Governor of the Commonwealth of Kentucky, and the defendant Charles K. O'Connell is the duly elected, qualified and acting Secretary of State of the Commonwealth of Kentucky, both of whose official residences are at Frankfort; that the defendant James F. Queenan is the duly elected, qualified and acting Clerk of the Jefferson County Court, whose official residence is at Louisville, Kentucky.

Plaintiff states that on or about April 17, 1950, the State Board of Health through its Secretary attempted to institute a proceeding against the plaintiff under the provisions of Section 311.110 and 311.120, Kentucky Revised Statutes, 1948 edition, then in effect; that in said proceeding the State Board of Health entered an order on December 13, 1951 by which said Board states that it "absolutely revokes any and all licenses heretofore issued by the said Board to the Respondent, Stanley G. Bandeen, to practice osteopathy, to administer drugs or to practice any healing art whatever within that Commonwealth of

Kentucky"; that said order provided that it was to become effective at midnight on December 30, 1951, unless prior thereto said order be appealed; that pursuant to the provisions of Section 311.120 (3), Kentucky Revised Statutes, 1948 edition, then in effect, plaintiff did file an appeal from said order to the Governor of Kentucky; and that on March 11, 1953, the Honorable Lawrence W. Wetherby, Governor of Kentucky, indicated his approval of said order entered December 13, 1951. A copy of said order of December 13, 1951, entitled "Findings and Order of State Board of Health" is filed herewith as Exhibit "A". A copy of the order entered by Governor Lawrence W. Wetherby on March 11, 1953, is filed herewith as Exhibit "B".

Plaintiff states further that the order which the State Board of Health attempted to make in the proceeding against this plaintiff was, and is, entirely void and of no effect because:

1. A proceeding for suspension or revocation of a license issued by the State Board of Health is required to be instituted by a complaint, stating specific acts or conduct that would be ground for suspension or revocation of a license under the provision of Kentucky Revised Statutes 311.110, 1948 edition, then in effect. No complaint stating any facts which constituted an offense under the provisions of said Section, or a violation thereof, was filed with said State Board of Health. Without the filing of such complaint the State Board of Health then had no jurisdiction to hold any hearing as to suspension or revocation of a license, and any order entered therein is void.

2. The method provided for instituting a proceeding for suspension or revocation of a license against the holder thereof, was specifically provided in Kentucky Revised Statutes, Section 311.120 (1) in part as follows:

"In every proceeding for suspension or revocation the holder of the license shall be furnished with a copy of the complaint and given at least thirty days thereafter to prepare for the hearing."

No copy of any complaint at all filed against plaintiff with said State Board of Health was ever furnished to plaintiff even though plaintiff insisted upon such being provided to him and consistently objected to the hearing of any proceeding against him without the filing and furnishing to him of such complaint stating facts or conduct which were supposed to be grounds for suspension or revocation of a license. In lieu of the furnishing of any complaint, the State Board of Health merely sent to plaintiff a letter notifying him to appear "to show cause why your license to practice osteopathy in the commonwealth of Kentucky should not be revoked because of grossly unprofessional or dishonest conduct of character likely to deceive or defraud the public in the treatment of cancer or tuberculosis". Having failed and refused to furnish plaintiff a copy of any complaint, the State Board of Health had no jurisdiction to hear said attempted proceeding against plaintiff, and any order entered therein is void.

3. The said order of December 13, 1951 made and entered by the State Board of Health of Kentucky finds that plaintiff engaged in acts and conduct that were grossly unprofessional and dishonorable and of such character that they were likely to and did deceive and defraud the public and certain patients and persons, within the meaning of Section 311.110 (4), Kentucky Revised Statutes. Said order was entered without any evidence or any facts or conduct on the part of the plaintiff in violation of Section 311.110 (4), Kentucky Revised Statutes, 1948 edition, then in effect, and is, therefore,

absolutely void and of no effect because there was no evidence upon which to base such an order.

4. Section 311.120, Kentucky Revised Statutes, constituted the State Board of Health a tribunal to hear and determine facts, to which the law might apply. The said order entered December 13, 1951 is designated "Findings and Order" but it contains no findings of facts or conduct, and plaintiff has never learned from said order or otherwise as to what acts or conduct of plaintiff's the said State Board of Health believed to have constituted a violation of Section 311.110 (4), Kentucky Revised Statutes, then in effect. Without such findings of facts, the State Board of Health had no right or authority to enter such order, and the entry of such order without making a finding of facts was arbitrary action and as such violated the Fourteenth Amendment to the Constitution of the United States and the Constitution of the State of Kentucky, Sections 1 and 2. Such an order without such finding is, therefore, entirely void.

5. Section 311.120, Kentucky Revised Statutes, then in effect, provided for notification to a license holder of any complaint with opportunity for such license holder to attend the hearing. It also provided that "The Board may take oral or written proof for and against the complaint as it considers will best present the facts."

In this case, the Secretary of the Board, sitting then as a member of the Board, assumed the role of prosecutor, testified at some length without being sworn. Upon objection, the Chairman ruled:

> "I understand, he is not a witness. He is presenting some facts, matters before the Board. He is not a witness.
>
> "He is a member of the Board, and he is furnishing information to the Board to help them to determine."

When the Secretary offered in evidence a long memorandum of hearsay statements, the objection to filing was overruled with this statement from the Chairman:

> "I am sorry to disagree with you, but we are trying the case on what we can hear now and what we can get authentically and reliably through our investigators."

Plaintiff does not know as to what further statements the Secretary or the investigators may have made to the Board, but the position taken by the Board amounted to a denial to plaintiff of a fair and impartial hearing of facts as guaranteed by the Fifth Amendment to the Constitution of the United States and Section 13 of the Constitution of Kentucky.

6. The licenses which plaintiff holds for the practice of osteopathy are valuable property rights. The absence of any complaint stating facts to constitute a violation of Section 311.110, Kentucky Revised Statutes, the failure and refusal of the State Board of Health to furnish to plaintiff a copy of a complaint, the refusal by said Board to give plaintiff a fair and impartial trial and the failure of said Board to make any findings of facts all make the entry of the order of December 13, 1951, as now attempted to be sustained, constitute the taking of property from plaintiff in violation of the Fifth Amendment to the Constitution of the United States and the First Section of the Constitution of the Commonwealth of Kentucky.

7. The said order, which was in fact void at all times, was appealed to the Governor of Kentucky as authorized by Section 311.120 (3), Kentucky Revised Statutes, 1948 edition, then in effect, but said appeal was not acted upon by the Governor of Kentucky at any time prior to June 19, 1952, or until March 11, 1953. On June 19, 1952, an Act of the General Assembly of Kentucky, passed at its 1952 ses-

sion as House Bill 137, designated as Chapter 150 of the Legislative Acts of Kentucky, became effective. By said Act the Legislature of Kentucky expressively repealed Sections 311.110 and 311.120, Kentucky Revised Statutes. Regardless of whether or not this order entered December 13, 1951 was or was not valid, the proceeding against plaintiff ended with the effective date of the repeal of said statutes. Any further steps in said proceeding which the State Board of Health had attempted to institute in such irregular manner and with such manifest unwillingness to disclose the basis, if any; of the claim of any violation of law by the plaintiff, became then entirely ineffective and any further steps taken or attempted to be taken in said proceeding, including any action by the Governor of Kentucky, were wholly unauthorized, illegal, ineffective and void.

Plaintiff states that unless restrained and enjoined by the Court the defendants will immediately execute the order of the State Board of Health as attempted to be affirmed by the Governor; that notice of the action of the Board and the affirmance by the Governor will be given to the defendant, County Court Clerk of Jefferson County, in which county plaintiff's license to practice osteopathy in the Commonwealth of Kentucky is registered; that his name shall be removed from the records of the County Court Clerk of Jefferson County as a licensed osteopath within the Commonwealth of Kentucky in accordance with the terms of said order.

Plaintiff states that unless enjoined and restrained by the Court he will suffer irreparable damage for which he has no adequate remedy at law and that irreparable injury will result to plaintiff from the delay of giving notice to the defendants.

Plaintiff states that he has not applied to any court or judge thereof for the injunction sought in this petition,

nor has said injunction been granted or refused by any court or judge thereof.

Wherefore, plaintiff, Stanley G. Bandeen, prays as follows:

(1) That the defendants, E. M. Howard, J. Watts Stovall, Bruce Underwood, George S. Coon, Thomas P. Leonard, W. H. Fuller, Carl J. Johnson, R. W. Robertson and Clarence Davis, individually or when acting collectively as the State Board of Health, be restrained and enjoined from giving notice of its action, under seal or otherwise, to the defendant, County Clerk of Jefferson County, in which the license of plaintiff is registered or from doing any other act, individually, or collectively toward enforcing or putting into effect its order of December 13, 1951, filed as Exhibit "A" to this petition.

(2) That the defendant, Lawrence W. Wetherby, be restrained and enjoined from enforcing his order of March 11, 1953, whereby he undertook to affirm the action of the State Board of Health in ordering that the license of plaintiff be revoked.

(3) That the defendant, Charles K. O'Connell, Secretary of State of Kentucky, be required to deliver to the Clerk of the Franklin Circuit Court the transcript of the hearing conducted by the defendant, State Board of Health, which transcript is now in possession of the defendant, Charles K. O'Connell; and when delivered, said transcript be made a part of the record herein and be considered as Exhibit "C" to plaintiff's petition; that the defendant, James F. Queenan, Clerk of the Jefferson County Court, be restrained and enjoined from marking the name of plaintiff from his records as a duly and regularly licensed osteopath or from striking the name of plaintiff from the register or record upon which the names of persons holding licenses to practice osteopathy in the Commonwealth of Kentucky are recorded.

(4) For an order setting aside the order of the State Board of Health dated December 13, 1951, and filed herewith as Exhibit "A" and the order of the defendant, Lawrence W. Wetherby, Governor of the Commonwealth of Kentucky, undertaking to affirm the order of December 13, 1951.

(5) Plaintiff prays that the defendants, and each of them, be temporarily restrained and enjoined by the Court from doing any of the acts hereinabove set forth and that upon hearing said injunction be made final and permanent.

(6) For his costs herein expended and for all other and further and proper relief to which plaintiff may appear entitled.

Blakey Helm,
Attorney for Plaintiff.

Plaintiff, Stanley G. Bandeen, first being duly sworn, states that he has read the allegations of the within petition and that they are true to the best of his knowledge and belief.

Stanley G. Bandeen

Subscribed and sworn to before me, a Notary Public, this 18th day of March, 1953.

My Commission expires August 23, 1956.

Allen Aoeth, Jr.,
Notary Public, Jefferson County, Ky.

APPENDIX C-2.

FRANKLIN CIRCUIT COURT
No. 45819

Stanley G. Bandeen, - - - - - - Plaintiff,

v.

E. M. Howard, et al., - - - - - Defendants.

ANSWER.

For answer herein the defendants, E. M. Howard, J. Watts Stovall, Bruce Underwood, George S. Coon, Thomas P. Leonard, W. H. Fuller, Carl J. Johnson, R. W. Robertson and Clarence Davis, individually and collectively as constituting the State Board of Health of Kentucky, hereinafter called the Board, states as follows:

Paragraph One

The Board admits the first, second and third literary paragraphs of the petition of the plaintiff, Stanley G. Bandeen, herein.

The Board specifically denies each and every other affirmative allegation contained in the plaintiff's petition, except insofar as same are hereinafter expressly admitted in this answer.

Paragraph Two

On or about April 17, 1950, the Board, acting through Bruce Underwood, M.D., its Secretary, notified the plaintiff in writing to appear before the Board on May 18, 1950, to show cause why the plaintiff's license to practice

osteopathy in the Commonwealth of Kentucky should not be revoked because of grossly unprofessional and dishonorable conduct of a character likely to deceive and defraud the public (a copy of said notice appearing at page one of the Transcript of Record filed herein).

The plaintiff personally appeared before the Board on May 18, 1950, with his attorney, Blakey Helm, Esquire, of Louisville, Kentucky, who thereupon filed a special demurrer (which appears at page two of the Transcript of Record filed herein) and a motion for a copy of the complaint (which appears at page three of the Transcript of Record filed herein). On the same date the Board, by action reflected in the official minutes of its meeting held on May 18, 1950 (which appears at page fourteen of the Transcript of Record filed herein), overruled the special demurrer, but sustained the motion for a copy of the complaint and indefinitely continued the case without hearing any evidence at that time.

Thereafter, on August 4, 1950, the Board, acting through Bruce Underwood, M.D., its Secretary, notified the plaintiff in writing that the hearing had been set for 10:00 a.m. on September 7, 1950, at the offices of the Board at 620 South Third Street in Louisville, Kentucky (a copy of said notice appearing at page four of the Transcript of Record filed herein), and furnished to the plaintiff as an attachment to said written notice, a copy of the complaint containing a statement of general and specific charges (a copy of same appearing at page five of the Transcript of Record filed herein).

The plaintiff personally appeared before the Board, at its offices aforesaid at Louisville, Kentucky, on September 7, 1950, with his attorney, Blakey Helm, Esquire, of Louisville, Kentucky, who thereupon filed another special demurrer (which appears at page 2-A of the Transcript of Record filed herein), and a general demurrer (which

appears at page six of the Transcript of Record) both of which were overruled by the Board (as evidenced by orders appearing at pages twelve and thirteen of the Transcript of Record filed herein and as evidenced by pages six and seven of the Transcript of Proceedings filed herein). Thereupon plaintiff's counsel filed an answer (which appears at page seven of the Transcript of Record filed herein) and counsel for the Board filed a reply (which appears at page eight of the Transcript of Record filed herein).

Whereupon the hearing proceeded on September 7, 1950, at the offices of the Board at 620 South Third Street in Louisville, Kentucky, in a suitable room customarily used by the Board in holding its regular meetings, there being present the following persons who were duly appointed and qualified members of the Board: E. M. Howard, M.D., Bruce Underwood, M.D., J. Watts Stovall, M.D., F. M. Travis, M.D., George S. Coon, M.D., Carl J. Johnson, D.O., and C. B. Davis, Ph. G. A duly qualified Notary Public, James M. Yoder, of Jefferson County, Kentucky, was present and took down transcribed and compiled all testimony, evidence and exhibits, introduced at said hearing, and all objections, exceptions and rulings made thereat (which appears in the Transcript of Proceedings containing 144 typewritten pages, together with exhibits, certified by the said James M. Yoder and filed herein).

The Board admits that the quotations appearing in subparagraph numbered five of the plaintiff's petition are excerpts of remarks made by the President of the Board at the hearing, but states that they have been quoted by the plaintiff out of context and do not fully reflect the colloquy between the President of the Board and counsel for the plaintiff, and that the best evidence of what

actually took place at the hearing is the Transcript of Proceedings which has been filed herein.

Counsel for the plaintiff, having stated that he did not care to orally argue the case before the Board (see page 142 of the Transcript of Proceedings filed herein), was granted permission to file a brief with the Board (see said Transcript of Procedings pages 143-144). Thereafter the Board, on December 13, 1951, after duly considering the Transcript of Record and the Transcript of Proceedings, and briefs filed by counsel for the plaintiff and counsel for the Board, and also a decision of the Federal Trade Commission of the United States of America, dated September 4, 1951, Docket No. 4772 (a copy of which is filed as a part of this answer and marked "Exhibit A") finding that the so-called Koch Cancer Treatment has no therapeutic value but has adverse affects on some persons, and that it is a false, deceptive, and spurious treatment, reached the opinion that the plaintiff had, by prescribing and administering the so-called Koch Cancer Treatment, and by neglecting patients, and by charging excessive fees, and by recommending bizarre and unproven diets and drugs, and by falsely representing that he was licensed to practice medicine, and otherwise, engaged in acts and conduct that were grossly unprofessional and dishonorable and of such a character that were likely to, and did, deceive and defraud the public and certain patients and persons, within the meaning of Section 311.110(4) of the Kentucky Revised Statutes that were then in effect. Whereupon the Board entered a written finding that the plaintiff had engaged in acts and conduct that were grossly unprofessional and dishonorable and of such a character that they were likely to and did deceive and defraud the public and certain patients within the meaning of the above cited statute and, concurrently therewith ordered that any and all licenses previously

issued by the Board to the plaintiff to practice osteopathy, to administer drugs, and/or to practice any healing art whatsoever, within the Commonwealth of Kentucky, be absolutely revoked; said finding and order was upon motion of the osteopathic member of the Board (Carl J. Johnson, D.O.) and was unanimously adopted and signed by all members of the Board, except Bruce Underwood, M.D., Secretary of the Board, who did not participate in the deliberation or decision of the Board conducted and reached by the Board in closed session after submission of the case. The written finding and order of the Board, bearing signatures as aforesaid, appears at pages numbered fifteen and sixteen of the Transcript of Record filed herein; a true and correct photostatic reproduction of same being attached to this answer as a part thereof and marked "Exhibit B".

The aforesaid proceeding before the Board was conducted in accordance with due process of law and in compliance with Section 311.120(1) of the 1948 edition of the Kentucky Revised Statutes which was then in effect and which read as follows:

> "In every proceeding for suspension or revocation the holder of the license shall be furnished with a copy of the complaint and given at least thirty days thereafter to prepare for the hearing. He may be heard in person and by counsel. The board may take oral or written proof for or against the complaint as it considers will best present the facts."

The Board had and has authority to institute revocation proceedings upon its own initiative against the plaintiff, or any other person licensed by the Board to practice osteopathy or medicine, for any reasons set forth in the Kentucky statutes as grounds for revocation of such licenses, said authority being implicit under the above

quoted Section 311.120(1) of 1948 edition of the Kentucky Revised Statutes which provides that the Board shall have general supervision of the health of the citizens of this state, and also under Section 211.010 of Kentucky Revised Statutes which provides that the State Department of Health shall have and exercise all the administrative functions of the state in relation to public health and other matters including "the licensing and regulating the practice of professions and occupations for the protection of public health".

The Board had authority to revoke the plaintiff's license to practice osteopathy under Section 311.110 of the 1948 edition of the Kentucky Revised Statutes then in effect, which set out the causes for which a license could be suspended, revoked or denied, and after enumerating certain grounds in subparagraphs (1), (2) and (3) thereof, also provided as follows:

> "(4) Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public."

The proceedings before the Board were administrative, and not judicial in character, and therefore the rules of law relating to administrative proceedings, rather than rules of law relating to judicial proceedings, were applicable thereto. The plaintiff had adequate notice of the hearing, and of the complaint as set forth in the charges. The plaintiff was present in person and was represented throughout by eminent and able counsel, Blakey Helm, Esquire, of Louisville, Kentucky. The plaintiff and his counsel fully participated in the hearing and did not request or seek a continuance on the grounds of surprise or otherwise, after counsel for the Board closed the evidence in chief against the plaintiff. Therefore the plaintiff is now estopped from

claiming that the notice was inadequate or that he was taken by surprise. Although the hearing was held on September 7, 1950, and the Board's finding and order was not entered until December 13, 1951, the plaintiff did not move for a reopening of the case on the grounds of surprise, newly discovered evidence, or otherwise, prior to the Board's decision on December 31, 1951, or at all. Therefore he waived any right to claim inadequacy of notice or surprise.

The aforesaid finding and order of the Board dated December 13, 1951, was and is valid and has not been redered invalid or inoperative in any respect by the enactment of Chapter 150 of the Acts of the General Assembly of Kentucky of 1952 which provides in substance, by Section 15(1) thereof, that said Act of 1952 shall not be construed to validate any license that was revoked by the Board in accordance with law prior to the effective date of said 1952 Act.

The license previously issued by the Board to the plaintiff was absolutely revoked by the Board in accordance with law on December 13, 1951, which was more than six months before said Act of 1952 became effective on June 19, 1952. The Board, in its desire to be eminently fair to the plaintiff, provided in its order of revocation that the order of revocation "stand suspended" pending decision by the Governor of Kentucky if an appeal was taken by the plaintiff to said Governor, under Section 311.120(3) of the 1948 edition of the Kentucky Revised Statutes, then in existence, prior to midnight on December 30, 1951. Prior to midnight on December 30, 1951, the plaintiff took an appeal to the Governor of Kentucky under the aforesaid statute then authorizing same and accordingly the Board refrained from giving notice to the County Court Clerk of its order of revocation pending decision by the Governor on said appeal.

Chapter 150 of the Acts of Kentucky General Assembly of 1952 referred to above incorporated into subsection (h) of subsection (1) of section 11 thereof dishonorable or unprofession conduct of a character likely to deceive or defraud the public as ground for license revocation by the Board, but it repealed the former statutory provision that authorized an appeal to the Governor of Kentucky from the Board's order of revocation and provided in lieu thereof, by Section 11(4), that the exclusive method of procuring judicial review of the Board's order of revocation shall be by a declaratory judgment action in the Jefferson Circuit Court. Notwithstanding these provisions in Chapter 150 of the 1952 Act, plaintiff's counsel personally appeared before Honorable Marion Rider, Commissioner appointed by Governor Lawrence Wetherby to hear, consider, report and make recommendation on the appeal, on at least two occasions after said Act of 1952 became effective and represented and contended, orally and by written briefs, that the plaintiff was entitled to proceed with the appeal and that said appeal should be decided under the statute law as it existed on December 13, 1951, the date of the Board's order revoking plaintiff's license. Neither the plaintiff nor his counsel contended or suggested that the 1952 Acts invalidated, impaired or affected said order of revocation but, on the contrary, vigorously asserted that the plaintiff was entitled to have his appeal decided by the Governor under the statute law that existed in December, 1951. Accordingly, counsel for the Board, as further evidence of the Board's desire to be eminently fair to the plaintiff, interposed no objection to the matter being decided by the Governor on the appeal taken by the plaintiff before the effective date of the 1952 Act referred to above. By reason of said representations, acts and conduct on the part of the plaintiff and his counsel, which plaintiff and his counsel now wrongfully seeks to repudiate, the

plaintiff is now estopped from claiming that said Chapter 150 of the 1952 Acts of the General Assembly of Kentucky rendered the Board's order of revocation dated December 13, 1951, invalid or ineffective in any manner whatsoever, and is also estopped from claiming that the Governor of Kentucky was without authority to affirm and sustain said order.

Under date of January 14, 1953, the said Commissioner Rider, after considering the case, and oral and written arguments made by counsel for the plaintiffs and the Board, correctly reported to Honorable Lawrence W. Wetherby, Governor of the Commonwealth of Kentucky, that the evidence supports the finding and order of the Board, dated December 13, 1951, revoking the plaintiff's license (a true and correct copy of said report of Commissioner Rider is attached to this answer as a part hereof and marked "Exhibit C-1").

Under date of March 11, 1953, the Honorable Lawrence W. Wetherby, the duly elected and qualified Governor of Kentucky, signed and entered a decision correctly sustaining the finding and order of the Board, dated December 13, 1951, revoking the plaintiff's license (a true and correct copy of said decision of the Governor Wetherby is attached to this answer as a part thereof and marked "Exhibit C-2").

Both the report of Commissioner Rider and the decision of Governor Wetherby, referred to above, were filed by the Governor of Kentucky (as evidenced by the certificate of Charles K. O'Connell, Secretary of State of Kentucky, which is attached to this answer as a part hereof and marked "Exhibit C-3").

Under date of March 17, 1953, the Board notified the plaintiff of the decision of Governor Wetherby referred to above. Whereupon the plaintiff, for the purpose of attempting to further delay the Board in putting into effect its

order, dated December 13, 1951, absolutely revoking the plaintiff's license, instituted this action.

The Board has not sought to deny to the plaintiff recourse to the courts from the Board's order to revocation dated December 13, 1951. However, if it should be held, as contended by the plaintiff, that Chapter 150 of the 1952 Acts of the General Assembly of Kentucky terminated the right of the Governor of Kentucky to decide the plaintiff's appeal taken to the said Governor by the plaintiff under the previously existing Section 311.120(3) of the Kentucky Revised Statutes, then and in that event the Board's Order of revocation, dated December 13, 1951, became of full force and effect by operation of law on June 19, 1952, which was the effective date of the aforesaid 1952 Act, and the Franklin Circuit Court is without jurisdiction to entertain this action in view of Section 11(4) of the said 1952 Act which provides that all actions to procure judicial review of orders of the Board suspending or revoking licenses shall be in the Jefferson Circuit Court and must be filed in said Court within thirty days after the plaintiff is notified of such Board orders. Therefore, if it should be held that the decision of the Governor of Kentucky referred to above is invalid because of enactment of the aforesaid 1952 Act of the General Assembly of Kentucky, the Board expressly pleads that this Honorable Court (Franklin Circuit Court) was and is without jurisdiction to entertain the plaintiff's petition herein and that the Clerk of said Court was and is without authority to issue a restraining order herein for the reasons stated above.

Wherefore, the above named defendants pray that the temporary restaining heretofore issued herein by the Clerk of the Franklin Circuit Court be dissolved, set aside and held for naught, and that the plaintiff's application for an injunction be denied, and that the plaintiff's petition be

dismissed and that he take nothing thereby, and that all costs in this action be assessed against the plaintiff.

Martin R. Glenn,
Ernest W. Rivers,
of Louisville, Kentucky,
Attorneys for the State Board
of Health.

The affiant, Bruce Underwood, M. D., states that he is Secretary of the State Board of Health, and that the statements in the foregoing answer are true to the best of his knowledge, information and belief.

Witness my hand this the 23 day of April, 1953.

Bruce Underwood, M. D.

State of Kentucky }
County of Jefferson }

Sworn and subscribed to before me by Bruce Underwood, M. D., this the 23rd day of April, 1953.

My commission expires August 27, 1956.

Betty P. Polsgrove,
Notary Public,
Jefferson County, Kentucky.

(Notary Public Seal)

APPENDIX C-3.

FRANKLIN CIRCUIT COURT

Stanley G. Bandeen, - - - - - - Plaintiff,

v.

E. M. Howard, et al., - - - - Defendants.

REPLY.

Plaintiff, Stanley G. Bandeen, for reply to Paragraph Two of the Answer filed herein, says that plaintiff denies that the State Board of Health at any time furnished to plaintiff a copy of any complaint against him, and denies that the hearing on September 7, 1950 was in a suitable room (being the office of the Secretary of the State Board, who tried to deny admission to persons wanting to attend), and denies that the exhibit, included in the transcript entitled In re: Proceedings Against Dr. Stanley G. Bandeen, is a part of the evidence in the proceeding heard by the State Board of Health.

Plaintiff denies that the quotations in the petition are out of context, denies the allegation that same do not reflect the colloquy properly.

Plaintiff denies knowledge as to whether or not the State Board of Health considered a decision of the Federal Trade Commission, as no such decision was filed in evidence or appears in the Record of the proceedings; and plaintiff denies that the State Board of Health made any of the specific findings of facts set out in Paragraph Two of the Answer; and plaintiff denies the allegation that Dr.

Bruce Underwood did not participate in the deliberation or decision of the Board.

Plaintiff denies that the proceeding was conducted in accordance with due process of law or in compliance with Section 311.120(1) of Kentucky Revised Statutes then in effect, and denies that the State Board of Health had or has authority to institute revocation proceedings against the plaintiff or any other person licensed to practice osteopathy or medicine for any reason; and plaintiff denies that the State Board of Health had authority to revoke plaintiff's license to practice osteopathy under Statutes then in effect, and denies that the proceedings before the State Board was administrative in character and denies the allegation that the proceeding was not judicial and the allegation that the rules of law relating to judicial proceedings were not applicable.

Plaintiff admits that he had thirty (30) days notice of the hearing on September 7, 1950, but denies that he had adequate or any notice of any complaints under said Statute, and denies that because of attending said hearing, or for any reason, plaintiff is estopped to claim that the notice was inadequate, and denies that by failing to move for a re-opening, he has waived any rights.

Plaintiff denies that the finding or order of the Board dated December 13, 1951 was or is valid, and denies the allegation that same has not been rendered invalid or inoperative by subsequent legislation, and denies that Chapter 150 of the Acts of the General Assembly provides that said Act shall not be construed to validate any license revoked prior to effective date of said Act.

Plaintiff denies that the license issued to plaintiff was at any time absolutely revoked.

Plaintiff admits that pursuant to notice from Honorable Marion Rider, his counsel appeared before said Commissioner, but plaintiff denies that his counsel at any time

represented or contended orally or by written briefs, or at all, that plaintiff was entitled to proceed with the appeal; and plaintiff denies that for any reason plaintiff is estopped to claim that the specific repeal of the previous law by Chapter 150 of the Act of 1952 rendered the Order of December 13, 1951 invalid or ineffective, or that the Governor was, when he attempted to affirm said Order, without authority to do so.

Plaintiff admits that he instituted this action, and says that this was for the purpose, not of delaying, but of permanently preventing the State Board of Health from putting into effect an order, entered December 13, 1951, in an unauthorized proceeding, which order was void when entered and which never became effective while the Statute under which it was brought, remained in effect.

Plaintiff denies that the Board's Order of revocation, dated December 13, 1951, ever became of full force or effect, and denies the allegation that this Court is without jurisdiction to entertain this action, or that an order entered in December, 1951 could be given judicial review under Chapter 150 of the Acts of 1952 by appeal to the Jefferson Circuit Court or to any Court.

Wherefore, plaintiff, Stanley G. Bandeen, prays as in his petition.

Blakey Helm,
Attorney for Plaintiff.

APPENDIX C-4.

"FRANKLIN CIRCUIT COURT.
January 20, 1954
No. 45819.

Stanley G. Bandeen, - - - - - - Plaintiff,

v.

E. M. Howard, et al.,
State Board of Health of Kentucky, et al., - Defendants.

OPINION.

The restraining order is set aside and plaintiff's motion to strike and his general demurrer to Defendants' answer is overruled.

The appeal from the Governor's Order should be and is dismissed.

(s) W. B. Ardery,
Judge, Franklin Circuit Court."

APPENDIX C-5.

"FRANKLIN CIRCUIT COURT
No. 45819.

Stanley G. Bandeen, - - - - - Plaintiff,

v.

E. M. Howard, et al.,
State Board of Health, et al., - - - Defendants.

JUDGMENT.

This action having been substituted for trial and judgment, pursuant to an agreed order entered herein on or about May 7, 1953.

And the Court having considered the pleadings and exhibits thereto, and the transcripts of record and evidence of proceedings before the State Board of Health, and the plaintiff's motion to strike and general demurrer to Defendants' Answer, and all other matters that were filed herein.

And the Court having also considered the briefs filed on behalf of the parties hereto by counsel for the plaintiff and by counsel for the defendants.

Now, therefore, the Court, being sufficiently advised, orders and adjudges as follows:

(1) That the Plaintiff's motions to strike and general demurrer to the defendants' answer, be and they are hereby overruled:

(2) That the temporary restaining order heretofore issued herein by the Clerk of this Court, be and the same is hereby dissolved, vacated and set aside;

(3) That the plaintiff's petition herein be and the same is hereby finally dismissed and that the plaintiff receive nothing thereby;

(4) That the defendant have and recover of the plaintiff, Stanley G. Bandeen, all costs herein, for which execution may issue.

Exceptions are reserved to the plaintiff to all the foregoing.

W. B. Ardery,
Judge."

APPENDIX C-6.

COURT OF APPEALS OF KENTUCKY
October 5, 1956

Stanley G. Bandeen, - - - - - - Appellant,

v.

E. M. Howard, Et Al., - - - - - Appellees.

Appeal from Franklin Circuit Court,
Honorable W. B. Ardery, Judge.

OPINION OF THE COURT BY JUDGE STEWART—AFFIRMING.

Stanley G. Bandeen filed this suit in the Franklin Circuit Court seeking to enjoin the State Board of Health of Kentucky (herein referred to as "the Board") from enforcing its order revoking his license to practice osteopathy

in Kentucky. The circuit court denied the injunction and Bandeen appeals, urging these grounds for reversal: (1) The Board had no jurisdiction of the case; (2) there was no evidence to support the Board's order; (3) its order was void because it made no findings of fact; (4) Bandeen was denied a fair and impartial trial; and (5) the proceeding became a nullity when the statute under which the Board was proceeding was repealed.

Bandeen was admitted to the practice of osteopathy in Missouri in 1922 and in 1926, through reciprocity, was licensed to pursue the same profession in Kentucky. At the hearing before the Board, he admitted that he did not hold the degree of Doctor of Medicine; that he had no right to use the professional title of "Doctor of Medicine" or its abbreviation, "M. D."; and that he was not entitled to engage in the general practice of medicine or surgery.

On April 18, 1950, Bandeen received a letter from the secretary of the Board notifying him to "show cause" within thirty days why his license should not be revoked because of "grossly unprofessional or dishonest conduct of a character likely to deceive or defraud the public in the treatment of cancer and tuberculosis." This proceeding was pitched under KRS 311.110(4), then in force. Bandeen appeared and filed special and general demurrers on the grounds that no complaint had been entered against him and that he had not been furnished with a copy of any complaint that might have been filed against him pursuant to KRS 311.120(1), which was in effect at the time. Thereupon this meeting of the Board was adjourned and thereafter the secretary of the Board, by a communication dated August 4, 1950, notified Bandeen of a hearing to be held before the Board on September 7, 1950, and attached a copy of a complaint setting out certain specific charges. These charges were, briefly stated, using medicines of doubtful

value, imposing excessive charges, making unjustified promises of cure and deceiving patients about their physical condition, following unorthodox diagnostic procedures, employing scare tactics, and failing to provide for adequate relief of pain. A list of six patients and their dates of treatment, with reference to whom the charges were made, was appended. This complaint was demurred to on the ground that the notice did not give sufficient information as to the time and place of the treatments and as to the parties involved. The demurrer was overruled.

Bandeen's challenge to the jurisdiction of the Board is bottomed upon the contention that it initiated the instant proceeding against him in its name, whereas it is maintained the correct mode of preferring charges against him was by the verified complaint of some individual. This position is untenable. There was nothing in the applicable statutes in effect in 1950 which prohibited the Board from instituting a revocation proceeding upon the basis of information received by it or by any member thereof. It is well established that in the absence of express statutory restraints an administrative agency may inaugurate investigations and hearings of the character under discussion on its own motion. This is one of the distinctive functions of such agencies which sets them apart from the courts. See 42 Am. Jr., Public Administrative Law, Sec. 31, p. 323; Federal Communications Commission v. Pottsville Broadcasting Co., 309 U. S. 134, 84 L. Ed. 656, 662.

The second ground alleged as error is that the evidence does not sustain the Board's order of revocation. This assertion requires an examination of the evidence. However, before we give a summary of the proof, attention should be called to the fact that an exhibit in the record shows Bandeen was listed in the classified ad section of the Louisville telephone directory as a "Doctor of Medi-

cine". The secretary of the Board stated that demands had been repeatedly made upon Bandeen, beginning as far back as 1944, to discontinue this type of listing, but such demands were not acceded to until shortly before the hearing of this case by the Board. Bandeen frankly admitted at the hearing he had no right to advertise as a "Doctor of Medicine". We believe his action in holding himself out in the manner we have indicated, knowing full well he was practicing a deception upon the public in respect to his professional status, constituted an unethical act tantamount to fraud. See 41 Am. Jur., Physicians and Surgeons, Sec. 51, p. 178.

The label of "miracle doctor" had become attached to Bandeen in the community where he practiced. He denied he ever referred to himself in such fashion, but he freely conceded he was recognized for his outstanding curative powers and indicated this reputation was justified because of the "marvelous recoveries" he had effected by the type of treatments he employed. He administered the so-called "Koch shots" to patients he diagnosed to have cancer. His charges for these shots ranged from $100 to $150. He testified he procured the substance he injected into his patients from an organization or cult known as the Christian Medical Research League of Detroit, Michigan, at a cost of $25 per shot. When one of the Board members inquired whether his charges for the shots were not out of proportion to their cost, he claimed every treatment also included an examination of the "eyes, ears, nose, throat, heart, lungs, rectum, nerves, teeth, tonsils, etc." He declared he was aware the "Koch shots" had been fully investigated by the American Medical Association and had not been recommended by it. He also stated he was virtually the only practitioner in Kentucky who subscribed to this method of treatment.

One of Bandeen's patients, Mary Frances Rucker, was pronounced by him to have a cancerous tumor and, accord-

ing to her husband, Everett Rucker, she grew worse and Bandeen said he could cure her and gave her three "Koch shots", charging $100 for each. When Bandeen went to see her he made a remark in the presence of both Rucker and his wife that a rubber sheet should be placed under the latter because "she's going to burst wide open and die right now." Rucker stated his wife was in great pain and Bandeen did nothing to relieve her. He also testified Bandeen's statement so frightened his wife that she "went crazy as a bedbug" and had to be later confined in the Central State Hospital as a lunatic where she remained about two months. She died some sixteen months later.

Lue Limp testified Bandeen performed hemorrhoid surgery upon her, charging her $150 for the operation. He told her "cancer would be her trouble later", and offered to give her a cancer shot for an additional $150. She said this diagnosis induced her to submit to an injection. Subsequently she went to Doctor Henry Ashman who operated on her for hemorrhoids and advised her she did not have cancer.

John Fred Herms, who had been twice operated upon for a cancerous condition in the throat and had been informed he did not have long to live, went to Bandeen for treatment when he heard he was a "miracle doctor". Bandeen said he considered Herm's case hopeless. Nevertheless, he administered a shot to Herms. The latter's mother testified that while he was suffering excruciating pains, Bandeen gave him some tablets which he enjoined him not to take unless he had "dying pains". Herms died five days later.

Bandeen took the stand and testified in his own behalf and introduced only one witness, his office nurse. The tenor of his testimony, as a whole, was to justify his curative methods.

On December 13, 1951, upon the basis of the evidence recited, the Board found that Bandeen "while a licentiate of said Board, engaged in acts and conduct that were grossly unprofessional and dishonorable and of such character that they were likely to, and did, deceive and defraud the public and certain patients and persons, within the meaning of KRS 311.110(4)."

The general rule is that, in the absence of statutory directions (and there is no direction in our law), the findings of fact of an administrative board, such as the State Board of Health, are conclusive upon a reviewing court, if such are supported by substantial evidence, and even if such are based upon conflicting evidence. See 42 Am. Jur., Public Administrative Law, Sec. 211, p. 626. Such findings of fact should not be disturbed where the board had jurisdiction of the case and acted honestly and impartially, and not arbitrarily: See 70 C.J.S., Physicians and Surgeons, p. 904. See also Board of Health of Covington v. Kollman, 156 Ky. 351, 160 S. W. 1052.

Uncontroverted testimony was developed to the effect that Bandeen had paid for a listing in the Louisville telephone directory as a "Doctor of Medicine", although he did not have this professional status, and had in 1944, and several times thereafter, been warned by the Board to have the listing removed, which warning he ignored until this proceeding was begun. He also gave the so-called "Koch shots" for cancer treatments, with knowledge that after investigation the American Medical Association had branded the use of such a substance valueless therapeutically. It was brought out that Bandeen charged $100 to $150 for each "Koch shot" while the cost of each shot was only $25. He gave conflicting testimony as to what the services for each charge involved. It was stated Bandeen refused to relieve pain on two occasions and employed methods that terrorized on another. All this was

denied by him. There was proof that Bandeen claimed in several instances that "Koch shots" would cure cancer. He refuted this testimony in part.

Considering the evidence which was not controverted and that which the Board could have believed, it could only with difficulty be held that its order was not supported by any substantial evidence. Nor can it be said its decision was not an honest and impartial one. In Forman v. State Board of Health, 157 Ky. 123, 162 S. W. 796, this language appears: "Whether the physician's acts were sincere or fraudulent and done for the purpose of defrauding the public is a question to be decided by the Board on all the facts.

The testimony introduced before the Board concerned patients diagnosed and treated by Bandeen as cancer cases. It is common knowledge that medical science has yet discovered no drug that will cure this disease in its malignant state. Despite this fact, it will be recalled Bandeen gave assurance, according to the testimony of Everett Rucker, that he could heal the latter's wife who was suffering from cancer in an aggravated form. He gave her three "Koch shots" at a cost of $100 per shot. Her illness was so advanced it should have been apparent to Bandeen that he could do nothing to save her life. It has been held that the acceptance of money upon the promise or representation of being able to cure a disease regarded by the consensus of medical opinion as incurable constitutes such unprofessional and dishonorable conduct as would warrant a license revocation. See Freeman v. State Medical Examiners, 54 Oklahoma 531, 154 Pac. 56.

It is next argued the order was a nullity because it did not set out any findings of fact. The statute under which the proceeding was instituted and conducted did not require that such be done. Written special findings by administrative agencies are not necessary in order to meet

due process of law requisites. See Davis on Administrative Law (1951 Ed.), pp. 524 and 526. It has been held that a revocation of license for "unprofessional conduct" was valid, although it was not supported by a written particularization of evidentiary facts, since the record itself supplied these matters. See Duvall v. Board of Medical Examiners of Arizona, 19 Ariz. 329, 66 Pac. 2d 1026. In Barren v. Board of Dental Examiners of the State of California, 44 Cal. App. 2d 790, 113 P. 2d 247, a finding that one of its licensees was "guilty as charged in the accusation" was sufficient to support an order of license revocation; and in State ex rel. Ball v. State Board of Health, 325 Mo. 111, 26 S. W. 2d 773, an order to revoke a license was adjudged adequate, even though the record did not recite that the licensee stood convicted of the offense charged.

Bandeen's insistence that he was not accorded a fair and impartial trial is based upon a two-fold argument: (a) That the secretary of the Board was antagonistic toward him at the hearing which prevented his receiving neutral treatment and that this officer was allowed to read a report he had compiled concerning Bandeen's alleged professional misconduct; and (b) that in September, 1951, over a year after the hearing, counsel for the Board filed with it a copy of an opinion and an order of the Federal Trade Commission in the Matter of Koch Laboratories, Inc., etc., as respondents. Briefly stated, this opinion held that the so-called "Koch shots" in their various compounds have no therapeutic value in cancer or tuberculosis treatment, nor any beneficial effects as healing drugs, and, furthermore, that they have adverse effects on some persons when employed as a curative agent; and the order directed the respondents to cease disseminating these preparations by any means in commerce. The Federal Trade Commission opinion was later affirmed by the

United States Court of Appeals for the Sixth District. See Koch, et al. v. Federal Trade Commission, 206 F. 2d 311. Bandeen asserts he was not given an opportunity to produce counter evidence on the report and on the opinion.

It is true the secretary of the Board did much of the questioning of Bandeen, but this was not improper under the circumstances. Also, during the hearing, the secretary was permitted to give general information surrounding the complaints against Bandeen over the years. Bandeen argues this was prejudicial and denied him a fair hearing. It is patent the secretary's statements were pure hearsay and not competent for any purpose. However, Bandeen was given ample opportunity to introduce rebuttal evidence. Proceedings before administrative boards are informal and a wide latitude is allowed in taking proof and the technical rules of procedure are not ordinarily enforced. See Goodrich v. Selligman, 298 Ky. 863, 183 S. W. 2d 625. The secretary abstained from voting to revoke Bandeen's license. Furthermore, there was ample evidence other than that contained in the report of the secretary to sustain the Board's order. As to Bandeen's theory that he was dealt a wrong because the Board relied upon the Federal Trade Commission opinion in arriving at the conclusion is reached, our answer to that is the opinion was a finding of law, and not one of fact, hence the Board could take judicial notice of it. Especially is this true since the Federal Trade Commission opinion was later affirmed by the Sixth United States Circuit Court of Appeals.

KRS 311.120(3), before its repeal, provided that a licensee whose license had been revoked by the Board "may appeal to the Governor who may affirm or overrule the decision of the Board." Bandeen appealed to the Governor after the Board entered its order on December 13, 1951. While the matter was pending before the Governor,

the General Assembly at its 1952 session passed a comprehensive Act relative to physicians, osteopaths and chiropodists, now KRS Chapter 311, which became effective June 19, 1952, and which repealed KRS 311.110 (1948 Ed.). By KRS 311.595(1) (1953 Ed.), the Board retained its authority to revoke licenses on an expended number of grounds, and these included the four listed under the repealed statute. The new enactment deleted the right of an appeal to the Governor, set forth in KRS 311.120(3), a part of the old Act. However, the Governor nevertheless reviewed the proceeding before the Board and upheld it.

Bandeen earnestly insists that the Board's order was voided while his appeal was pending before the Governor, since KRS 311.120(3) (1948 Ed.) was repealed without a saving clause. We do not agree. The simultaneous repeal and the reenactment of substantially the same statute, or of portions of it, do not at common law work a repeal of the former act, but the substituted statute is construed as a continuation of the original provisions. Jones v. Kentucky State Board of Dental Examiners, 291 Ky. 136, 163 S. W. 2d 297. The jurisdiction of the Board was not disturbed, and the appellate jurisdiction was simply transferred from the Governor to the Jefferson Circuit Court. Since the new legislation did not impair the previously existing right, nor deny a remedy for its enforcement, but only modified the proceedings while providing a similar remedy, the jurisdiction continues under the forms directed by the repealing act, in so far as the two acts differ. Kingan & Co. v. Ossam, 75 Ind. 548, 121 N. E. 289.

It would seem that, upon repeal of the section conferring jurisdiction upon the Governor to pass upon an appeal of this kind, Bandeen should have appealed to the Jefferson Circuit Court, the only body with jurisdiction to hear the appeal under the existing law, and that, failing to follow

this designated procedural step, he should be denied injunctive relief for this reason also.

Wherefore, the judgment is affirmed.

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